

Message Text

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PAGE 01 USUN N 03199 120251Z

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C O N F I D E N T I A L USUN 3199

FROM: LOS DEL

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: INFORMAL PLENARY ON DISPUTE SETTLEMENT AUGUST 11

1. DEBATE ON ARTICLE 9 (CHOICE OF FORUM) CONTINUED
AUGUST 11 IN INFORMAL PLENARY.

2. DENMARK, FINLAND, SWEDEN, POLAND AND FRG EXPRESSED
SKEPTICISM ON NEED TO ESTABLISH NEW LOS TRIBUNAL WITH
POLAND ONLY ONE OF THIS GROUP ACTIVELY SUPPORTING SPECIAL
PROCEDURES. DENMARK EXPRESSED PREFERENCE FOR
INSTITUTIONALIZED ARBITRATION. FINLAND SUPPORTED ONE
TRIBUNAL WITH CHAMBERS FOR SEABEDS AND OTHER ISSUES.
SWEDEN SUPPORTED ICJ AND, SECONDARILY, ARBITRATION. POLAND
ALSO SUPPORTED THE ICJ, SEPARATE SEABEDS TRIBUNAL, AND
INCLUSION OF LEGAL EXPERTS ON SPECIAL COMMISSIONS. FRG
EXPRESSED SUBSTANTIAL FLEXIBILITY, SUPPORTING ARTICLE 9
AS DRAFTED, OR WITH ARBITRATION IN PLACE OF DEFENDANT'S
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PAGE 02 USUN N 03199 120251Z

CHOICE IN PARA . 7 AND DELETION OF SPECIAL PROCEDURES IF

WIDE SUPPORT IS APPARENT. FRG ALSO SUGGESTED REVISION OF SPECIAL COMMISSIONS IN ANNEX II TO ALLOW EACH PARTY TO A DISPUTE TO APPOINT ONE LAWYER AND ONE TECHNICAL EXPERT WITH SELECTION OF UMPIRE BY RELEVANT SECRETARY GENERAL IN CASES OF IMPASSE. CANADA WISHES TO DOWNPLAY STATUS OF SPECIAL PRECEDURES AND OPPOSED FISHERIES COMMISSION AS PREJUDICIAL TO ART. 18, WHERE INCLUSION OF FISHERIES MUST BE CAREFULLY LIMITED TO BROAD LEGAL QUESTION IN THEIR VIEW.

2. VENEZUELA SOUGHT PROCEDURALLY TO COMBINE CONSIDERATION OF SEABEDS TRIBUNAL AND LOS TRIBUNAL AND SEEMED TO ACCEPT OPTION FOR SPECIAL PROCEDURES WHERE LAWYERS ARE ASSISTED BY EXPERTS IN A CONCILIATION MODE AND REQUESTED CHANGE OF APPLICABLE LAW IN ANNEX II TO CONFORM TO ART. 16 OF PART IV. VENEZUELA ALSO SOUGHT DELEGATION OF PRECEDENT CLAUSE IN ART. 17, PARA 2. KENYA SUPPORTED CDS MORE SUBSTANTIALLY THAN IN THEIR EARLIER INTERVENTION AND URGED EXEMPTION FOR MATTERS UNDER EXCLUSIVE NATIONAL JURISDICTION. ALSO EXPRESSED RESERVATION ON SPECIAL PROCEDURES WITH FLEXIBILITY ON ART. 9 OTHERWISE. TRINIDAD TOBAGO SUPPORTED FLEXIBILITY AND SAID THEY COULD GO ALONG WITH ARBITRATION IN PARA 7 (WHERE PARTIES DO NOT AGREE ON FORUM). TUNISIA ALSO SUPPORTED ARBITRATION IN PLACE OF DEFENDANT'S CHOICE IN PARA . 7 WHILE INDICATING NOTABLE LACK OF ENTHUSIASM FOR ICJ.

3. US COMMENTED ON APPARENT GENERAL AGREEMENT ON APPROACH IN ARTICLE 9 AND INCLUSION OF ICJ AND ARBITRATION, WHILE STATING IT IS UNDERSTANDABLE THE NEW PROCEDURES (LOS TRIBUNAL AND SPECIAL PROCEDURES) WOULD GENERATE CAUTION AND SUGGESTING FURTHER CONSIDERATION OF THE NEW PROCEDURES IMPORTANT IF CONSENSUS IS TO BE FOUND. IN DOING SO, HE SUGGESTED NEED FOR FLEXIBILITY AND PRAGMATISM WHILE INDICATING THE CONTENT OF THE NEW PROCEDURES, SET FORTH IN THE ANNEXES, MIGHT INFLUENCE THEIR TREATMENT IN ARTICLE 9.

4. ALGERIAN REP ATTACKED ICJ AND ARBITRATION, POINTING OUT ARBITRATORS IN PRACTICE ARE FROM WESTERN COUNTRIES

CONFIDENTIAL

PAGE 03 USUN N 03199 120251Z

AND APPLY OLD INTERNATIONAL LAW, WITH SPECIFIC HOSTILE REFERENCE TO APPLICATION OF GENERAL PRINCIPLES OF LAW ACCEPTED BY CIVILIZED NATIONS, WHICH HE INTERPRETED AS WESTERN MUNICIPAL LAW APPLIED TO STATES THAT HAVE NOT ACCEPTED IT. HE SUPPORTED LOS TRIBUNAL FOR DISPUTES RELATING TO THE INTERNATIONAL SEABED AREA AND SUGGESTED NEED FOR EQUITABLE GEOGRAPHIC REPRESENTATION IN COMPOSITION OF SPECIALIZED COMMISSIONS IF THERE ARE ANY.

FOR ARBITRATION, HE SUGGESTED PANEL OF ARBITRATORS
INCLUDING LDC MEMBERS WITH ROTATING MEMBERSHIP
FOR CASES.

5. JAPAN URGED ACCEPTANCE OF SPECIAL PROCEDURES BY
ALL PARTIES, AUTHORIZING COMMISSIONS TO INTERPRET AND
APPLY THE CONVENTION, INCLUDING OF LEGAL EXPERTS
AND GENERAL UPGRADING OF ANNEX II. JAPAN WOULD ALSO
SUPPORT SPECIAL PROCEDURES FOR DISPUTES OVER CONTRACTS
ISSUED BY THE SEABED AUTHORITY AND OPPOSED NEW LOS
TRIBUNAL, WHILE GIVING SUPPORT TO ICJ AND ARBITRATION
AS GENERAL PROCEDURES.

7. PRC SPEAKS FIRST ON ART. 9 TOMORROW.
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